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"alletted by the High Court Legal Services Committee"

समक्ष माननीय उच्च न्यायालय न्यायाधिकार, जबलपुर म0प्र0

दांडिक अपील क्र0- 291 / 2000

अपील अन्तर्गत धारा 374(2) दांडिक प्रक्रिया संहिता

अपीलार्थी - - उमाशंकर पिता दुर्गाशंकर उम्र-35 वर्ष
(अभिरक्षा में) साकिन शीतलापारा कांकेर, जिला- कांकेर
(म0प्र0)

बनाम

प्रत्यर्थी - - मध्यप्रदेश शासन द्वारा
थाना प्रभारी - चारामा
जिला- कांकेर (म0प्र0)

श्रीमान विशेष [illegible]

IN THE HIGH COURT OF CHHATTISGARH ATBILASPUR

CRIMINAL APPEAL NO.2091/2000

Uma Shankar

vs.

State of M.P.(C.G.)

JUDGMENT

Per Hon.R.S.Garg,J :

The appellant being aggrieved by the judgment dated 14-7-2000 passed in Special Case No.14/2000 by the learned Special Judge (N.D.P.S.), Bastar (Jagdalpur) convicting the appellant under Section 20B(1) of N.D.P.S. Act, sentencing him to undergo rigorous imprisonment for two years and pay fine of Rs.1000/-, in default of payment of fine to further undergo rigorous imprisonment for one month, has filed this appeal.

2. The prosecution case in brief is that on 18-1-2000 P.W.4 C.L. Sirdar, Sub Inspector Police of Police Station, Charama, received an information from the informer that the accused was carrying some contraband ganja. After receiving the information, said C.L. Sirdar recorded the information and sent a wireless message to his superior officers. Alongwith the witnesses, he went to the spot, stopped the accused, issued him a notice underSection 50 of the Act and after obtaining his consent took search of the poly bag which was in possession of the applicant. In the search, 4 kilo 500 grams contraband ganja was recovered. That was weighed on the spot, samples were drawn, those were properly sealed, the accused and the

contrabands were brought back to the police station. At the police station, the first information report was recorded, the contrabands, etc. were kept in the malkhana. After some time, the samples were sent to the F.S.L.. The F.S.L. vide its report informed the police that the samples were of ganja. Armed with the F.S.L. report, statements of the witnesses, the panchnamas, etc. the police agency filed the challan against the appellant. As the accused abjured the guilt, he was put to trial. After recording the evidence and hearing the parties, the court below convicted and sentenced the accused as referred to above.

3. Learned counsel for the appellant submits that P.W.1 Ghanshyam and P.W.2 Latkhor have not supported the prosecution case, therefore, the court is left with the statements of P.W.3 Bhuneshwar Das and P.W.4 C.L. Sirdar. It is contended that there are material contradictions in the statements of these two witnesses and as the statements cannot be conclude, the benefit must go to the accused. It is contended that from the statements of P.W.3 Bhuneshwar Das, it would appear that there was absolute non-compliance of Section 50 of the Act and as the time of the seizure is shown to be different, then what it actually was, the court below was absolutely unjustified in recording the findings against the appellant.

4. Dr.N.K. Shukla, learned Dy.A.G. for the State, on the other hand submits that from Ex.P/5 and P/6, which contained the signatures of the accused, it would clearly appear that notice was given to the accused and his consent was taken. He submits that the notice is to be proved by the authority which had issued it and not by the person who happens to be present on the spot by chance. He further

submits that the different statements relating to the time of the seizure would not make much difference because from the written documents which contain the signatures of the accused and others, it would clearly appear that the seizure was effected under Ex.P/8, he has prayed for dismissal of the appeal.

5. I have gone through the statements of the witnesses. True it is that P.W.3 Bhuneshwar Das did not say that notice was given in his presence but in the opinion of this Court, this would not provide any defence in favour of the appellant in view of the statements of P.W.4 C.L. Sirdar. Said C.L. Sirdar has clearly stated in his statements that he issued a notice under Ex.P/5 to the accused and obtained his consent under Ex.P/6. The documents contain the signatures of the accused. Instead of explaining the signatures, the accused simply said under Section 313 Cr.P.C. that this all was wrong. From the statements of P.W.3 Bhuneshwar it would certainly appear that the contraband was recovered from the possession of the appellant. In a case where certain documents contain the signatures of the accused and he is not ready and willing to give his explanation, then the Court would be justified in recording a finding against him.

6. Bhuneshwar's statements that the seizure was made at about 6.30 would not provide any defence in favour of the appellant because the seizure memo Ex.P/8 clearly shows that the seizure was made at about 4.30. I find no reason to disbelieve the statements of the P.W.4 C.L. Sirdar. The quantity of ganja recovered from the

possession of the appellant must rule out every possibility of his false implication. The argument that a woman was sitting on the said auto-bike as a pillion rider, therefore, the contraband belonged to her should not detain this Court unnecessarily. From the statements of the witnesses, it would clearly appear that the said contraband was kept on the leg-space of the said auto-bike. True it is that Bhuneshwar had admitted that a woman was sitting as a pillion rider but the accused in his own statements did not say that some woman was sitting with him and the contraband belonged to her.

7. After hearing the learned counsel for the parties and going through the entire record, I am unable to hold that the court below was unjustified in convicting the appellant.

8. At this stage, learned counsel forthe appellant submits that the appellant appears to be in jail since 18-1-2000 and till date he has undergone alomost about 1½ years jail sentence and after 14-7-2000 i.e. the date of conviction, he must have earned about three months remission, therefore, the jail sentence be reduced to the period already undergone.

9. I have heard the parties.

10. Taking into consideration that the appellant is in jail since 18-1-2000 and since after his conviction and lodgement in jail he must have earned some remissions and further taking into consideration that no useful purpose would be served by keeping the accused in jail for few months, I am of the opinion that the jail sentence must be reduced to the period already undergone.

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11. While maintaining the fine amount and default sentence, I reduce the jail sentence to the period already undergone. If the appellant has already deposited the fine amount, then he be immediately released if not required in any other case but if he has not deposited the fine amount, he be required to undergo the default sentence.

12. The appeal to the extent ~~observations~~ indicated above, is allowed.

Sd/-
R.S. Garg
Judge

17-7-2001.

H/-